

**Zoning Board of Adjustment
May 29, 2013**

Attendance: Kent Lawrence, Judy Hurlbert, Betsy Coes, Dave Sweet, and Catherine Nelson.

Chairman Kent Lawrence opened the meeting at 7:00pm.

Case #13-05-29-01 Administrative Appeal

The Board met privately with Attorney Scott LaPointe to discuss the appeal of administrative decision filed by John Hayden concerning an administrative decision made by the Board of Selectmen in a letter written and dated March 25, 2013 to Windroc Vineyard.

The Board returned at 7:44pm.

Kent said the first concern brought up in John Hayden's appeal has to do with the site plan review of Windroc Vineyard. The Board of Selectmen has required a "limited" site plan review of Mr. Hillard. It is the Planning Board who determines what type of site plan is required. The zoning board does not have the authority to define the information required to authorize the winery.

The second issue is the definition of farming. Kent said that the current Newfields zoning allows wine making under the definition of farming. It is a permitted use and the zoning board cannot prohibit further agricultural activity.

Mr. Hayden encourages the board to use the state statute of farming. In his opinion, per RSA 676:14, "Whenever a local land use ordinance is enacted or a regulation is adopted which differs from the authority of an existing ordinance or other regulation, the provision which imposes the greater restriction or higher standard shall be controlling."

Scott Lapointe commented on Newfields Zoning Ordinance 1.7 and said that John Hayden would need to provide the statute which expressly places a greater restriction. Kent stated that the state statute does not list wine making as a permitted use under farming but it does not prohibit it either.

John Hayden stated that viticulture is described in the state statute. The legislature contemplated adding wine making to the state statute but the legislation did not pass. The Newfields farming definition is not the same as the State definition.

John Hayden said there is no way a winery would ever be considered a farm. A vineyard can be a farm and have a winery associated with it. The Hillard property is clearly a retail operation and the farm is subordinate to it. The winery opened before any real produce was being produced. He always felt the Hillard's would recognize that they were putting the cart before the horse by having the winery before they have the produce to support it. He would have hoped that the Hillard's would have asked for relief rather than what has taken place with the changing of the zoning ordinances.

Now that the ordinance has changed a winery can operate without growing any produce. The state statute is more restrictive and does not allow for a winery to open as a business as a farm and not be required to adhere to local zoning. It is difficult to say that a barn with a retail outlet winery is an agricultural use.

Scott Lapointe understands the frustration over the whole scope of the issue and what is going on. The issue has been addressed via different boards and Mr. Hayden is calling our attention to Ordinance 1.7 and it is his burden to provide a statute that expressly prohibits what is occurring at the winery.

Kent mentioned that it would have been nice if the winery had sought relief from the zoning board in regard to the 35% requirement. As it stands today, winemaking is part of our farm definition after the petition warrant article passed and there are no exclusions.

The third issue brought up in the appeal is the square footage of the Windroc signs. John Hayden said that when he put up his sign for his business both sides of the sign were counted toward the total square footage allowed. The recent sign ordinance which passed in March 2013 allows for only one side to count towards the square footage allowed providing both sides are exactly the same. The lighting was an issue and the planning board clarified the sign ordinance to allow for illuminated signs in the commercial district but the petitioned warrant article submitted by Hillard trumped the planning board ordinance and allows illuminated signs in the residential agricultural zone. John does not feel the signs should be grandfathered. The signs were not in compliant in the first place, before the citizen's petition passed.

Scott Lapointe noted that there is nothing in the old ordinance that specifically mentions both sides of a sign are used to calculate the square footage allowed.

In John Hayden's opinion, the Selectmen were erroneous in interpreting the old zoning ordinance and he feels the building inspector was also erroneous due to the fact that he had to count both sides of his business sign as part of the total square footage allowed by zoning.

The Hillard signs are less than the 40 square feet allowed by the current zoning if one side of the signs is measured; if both sides are measured all the signs are over the 40 square feet.

1. A motion was made by Kent and seconded by Cathy that the planning board has jurisdiction over site plan review not the Zoning Board. All were in favor and the motion carried.

2. A motion was made by Kent and seconded by Betsy that the current Newfields farming definition allows the wine manufacturing to operate under the definition of farming the way they are currently. The zoning board's jurisdiction is limited to the town ordinances. All were in favor and the motion carried.

3. A motion was made by Kent and seconded by Judy that there is no information to back up Mr. Hayden's contention that both sides of a sign are used in the calculation of square footage, prior to the vote of March 13, 2013. There is no proof to back up the way signs used to be measured. It would be up to the Board of Selectmen to pursue further total sign measurements. All were in favor.

The administrative appeal was denied.

Motion for Rehearing-Meserve/Elliott Case #13-04-24-01

A motion for rehearing was filed by applicants Bill Meserve and Bob Elliott and the Board of Selectmen.

The Selectmen cited that the applicants were not advised of their options to have a full board hear their case. The variance application was denied by the three member board present at the hearing; with one vote yes, one vote no and one abstention on the hardship criteria.

A motion was made by Kent and seconded to grant a rehearing of Case 13-04-24-1. All were in favor and the motion carried to hear the case at the June 26th meeting.

Case 13-04-24-2-Meserve/Elliott-Map 102 Lot 47

The applicant would like to convert the existing barn into a 1 bedroom living unit and is seeking relief from Article IV Section 4.8. Bill Meserve read his application.

1. Describe the unnecessary hardship created on the property based on the existing zoning ordinances: The zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of the property, considering the unique setting of the property in its environment. Conversion of the barn will allow the owner to create an additional living unit without a change to the character of the area, and allows a use consistent with abutting properties. The conversion of the barn will increase the life expectancy of the antique structure.
2. Explain how granting the variance will result in substantial justice: The variance will allow the owner to improve the property and allow a use that is appropriate to the area; and as a result the general public will realize no increased gain by denial of the variance.
3. Explain how a variance would be consistent with the spirit and intent of the ordinance: The variance will be consistent with the spirit of the ordinance in that the building footprint will not be changed significantly and the changed use will be consistent with the character of the surrounding properties.
4. Explain how the variance will not result in diminution in value of surrounding properties: The value of the property will be increased through the improvement of the existing structure and architecture. Adding the unit to the existing structure will result in less impact to the overall character of the existing area as opposed to development of additional building lots.
5. Discuss how the variance would not be contrary to the public interest: The granting of the variance will not alter the character of the locality as similar uses of abutting property currently exist; and the existing structure footprint will be minimally increased having no adverse effect on the public interest.

Bill stated that there have been numerous conversions in town in the shoreland protection zone.

The septic system would need to be enlarged to accommodate the additional living unit. Kent suggested the increased septic be completed before issuance of the certificate of occupancy if the variance is granted. Kent also mentioned that Ray Buxton informed him that the town sewer lines cross at the end of Meserve's driveway.

The board deliberated. Unnecessary hardship was discussed. Dave Sweet noted that the existing footprint of the barn will not change and the structure will be no closer to the shoreland. The applicant is adding more living space within the same footprint. The only reason the applicant is before the board is because the structure is in the shoreland protection district. Most of the property could be built on without even being near the shoreland district.

Betsy did not see the hardship in the case stating that there is nothing unique about the property. 'The applicant's home is no different than any other in the shoreland district; all the homes along the river

are old. In her opinion, the fact that the property is larger is irrelevant and financial hardship does not play a part; there is no hardship.

Kent read portions of section 9.1 Shoreland Protection. The purpose of the shoreland protection is to promote preserve and maintain water quality; to conserve and protect aquatic and terrestrial habitat associated with intertidal and riparian areas; to preserve and enhance those aesthetic values associated with the natural shoreline. The conversion will have no affect on the purpose of the ordinance.

Dave added that the septic is being expanded and the same footprint is being used. The home was there prior to the establishment of the shoreland protection district and that is the hardship.

The board took a vote on the 5 criteria

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| 1. The variance will not be contrary to the public interest. | Yes-5 | No-0 |
| 2. The spirit and intent of the ordinance is observed | Yes-5 | No-0 |
| 3. Substantial justice is done | Yes-5 | No-0 |
| 4. The values of surrounding properties are not diminished | Yes-5 | No-0 |
| 5. Literal enforcement of the provisions of the ordinance
Would result in an unnecessary hardship | Yes-4 | No-1 |

A motion was made by Kent and seconded by Dave to grant the variance with the condition that the septic system shall be increased to accommodate 4.5 bedrooms prior to certificate of occupancy being issued. All were in favor and the motion carried.

Case 13-04-24-03 Meserve/Elliott-Map 102 Lot 47

The applicant would like to convert the existing barn into a 1 bedroom living unit and is seeking relief from Article IX Section 9.3.5.2-the areas of land within 150 feet horizontal distance of the upland extent of any tidal marsh adjacent to the Squamscott River and Great Bay Estuary. Bob Elliott read the application.

1. Describe the unnecessary hardship created on the property based on the existing zoning ordinances: It is reasonable to grant the variance as the existing structure has existed since the 1840's and there will be no increased impact on the shoreland protection zone or character of the area. By denying it significant increase in costs would be required by the applicant to create an additional living unit.
2. Explain how granting the variance will result in substantial justice: The variance will allow the owner to improve the property without impacting the shoreland protection zone. The use is appropriate to the area and does not harm abutters or diminish water quality. The general public will realize no increased gain by denial of the variance.
3. Explain how a variance would be consistent with the spirit and intent of the ordinance:
 - a. The variance will be consistent with the spirit of the ordinance in that the building footprint will be minimally increased and measures will be taken to improve building run-off, having no impact on the intent of the shoreland protection restrictions.
 - b. Article IX-9.1.1 to promote the preservation and maintenance of surface water quality in Newfields. The quality of the run-off from the structure will be improved by the elimination of the existing direct discharge to the river, and the redirection of the run off away from the river to a storage and treatment system. The impermeable footprint of the barn structure will not be increased.
 - c. Article IX-9.1.2 to promote and protect aquatic and terrestrial habitat associated with the intertidal and riparian areas. The structure is located well above the intertidal and riparian areas

approximately 40 vertical feet above the river. The impermeable footprint of the barn structure will not be increased and the run-off quality will be improved.

d. Article IX-9.1.3 to preserve and enhance those aesthetic values associated with the natural shoreline. There will be no change to the present aesthetic value of the shoreline as the structure will be restored and layout will remain generally as it presently exists. A buffer strip of natural vegetation that is greater than the 75 foot requirement of section 9.4.1 will be maintained along the river.

e. Article IX-9.1.4 to preserve those uses that can be appropriately located adjacent to the shorelines. The home has existed since the late 1700's as a residence and farm and will continue to be used in the same manner and with improvements to the existing antique structure to assure for an increased life. Measures will be taken to improve run off water quality.

4. Explain how the variance will not result in diminution in value of surrounding properties: The value of the property will be increased through the improvement of the existing structure and architecture. The use will be similar to other allowed uses abutting the property and will not impact the run-off water quality.

5. Discuss how the variance would not be contrary to the public interest: The granting of the variance will not alter the character of the locality as similar uses presently abut the property. The existing structure footprint will be minimally increased and there will be improved containment and treatment of the building run-off.

Bill stated that he intends on installing a cistern for stormwater collection. Some of the water in the cistern will be used for agricultural irrigation. The water will not permeate through the ground and get treated.

The board took a vote on the 5 criteria

1	The variance will not be contrary to the public interest.	Yes-5	No-0
2	The spirit and intent of the ordinance is observed	Yes-5	No-0
3	Substantial justice is done	Yes-5	No-0
4	The values of surrounding properties are not diminished	Yes-5	No-0
5	Literal enforcement of the provisions of the ordinance Would result in an unnecessary hardship	Yes-4	No-1

A motion was made by Kent and seconded by Dave to grant the variance on the condition that the Best Management Wetlands Practices for Agriculture will be followed. All were in favor and the motion carried.

The meeting adjourned at 9:40pm.

Kent Lawrence, Chairman
Zoning Board of Adjustment